IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.939 OF 1999

The Greater Bombay Policei Force
Co-op. General Stores Ltd. .. Applicant

versus

Ali Ahmed Ibrahim .. Respondent

...

Mr.P.G.Karande for the applicant.

None for the respondent.

CORAM : D.G. KARNIK, J

DATED : 18th August 2006.

P.C.:

1. This Revision Application is directed against the order dated 16th July 1999 passed by the Learned Small Causes Judge, Mumbai setting aside the order of dismissal in default and restoring RAD Suit no.2294 of 1982 on file.

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2. The respondent filed a suit bearing RAD Suit no.2294 of 1982 against the revision applicant which was dismissed for his non appearance on 20th June 1992. The respondent thereafter took out a notice of motion, bearing no.6 of 1999, for condonation of delay and for setting aside of the order of dismissal of the suit. By the order dated 16th July 1999, the learned Judge allowed the said application and restored the suit to file. That order is impugned in this petition.

3. In paragraph no.5 of the impugned order, the learned Judge has noted that after service of a suit summons the petitioner (defendant in the suit) appeared and from time to time applied for time for filing of the written statement. The learnedn Judge has further noted that the suit was adjourned from time to time for filing of the written statement and at that stage i.e. 20th June 1992, the suit was dismissed for default. As the suit was posted for filing of the written statement, there was no occasion for the plaintiff respondent to remain present. He was required to attend the Court on the date when the suit was listed for hearing. If he remained absent on the date when the suit was posted for filing of the written

statement, in my view,he had sufficient cause to remain absent as the matter was not listed for hearing. In the circumstances, no fault can be found with the impugned order. In any event, substantial justice has been done. The suit has been restored to file and ordered to be heard on merits. No prejudice would be caused to the revision applicant by hearing of the suit on merits. In the circumstances, the order does not call for any interference in exercise of a revisional jurisdiction.

4. For these reasons, revision application is dismissed with no order as to costs.

(D.G. KARNIK, J)